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5,000—5-2-98

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4800

DATED 6th December 98

[Despatch Abstract.]

Communicating to the Board of Revenue G.O. Judicial
information and guidance resolution of the Govt.
of India determining the share of an escheated
estate to be reserved to the Crown in the disposal
of the effects of illegitimate persons
dying intestate.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government (1898) of Madras. JUDICIAL.

Current No. 8189

Recd. }
Regd. } 20/11 } 1898. Enclosures
Spare copies

G.O., No. 1753, 14th November 1898.

NOVEMBER.

*G.O. (sum) No. 4800 Dec 1898
Communicated to
the Board of Revenue.*

Estates that become escheat to the Crown by failure of legal heirs.

Communicating to the Administrator-General, for information and guidance, resolution of the Government of India determining the share of an escheated estate to be reserved to the Crown in the disposal of the effects of illegitimate persons dying intestate.

*3/12/98
H. J. S. Board of Rev. (Sd.)
2. 11. 98*

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers:—

G.O., No. 835, Judicial, dated 29th May 1866.

G.O., No. 1912, Judicial, dated 15th September 1881.

Read—the following letter from the Hon'ble Mr. C. GRANT, c.s.r., Secretary to the Government of India, Home Department (Judicial), to the Secretary to the Government of Madras, dated Simla, 27th August 1881, No. 17—1121:—

In a case which recently came under the notice of the Government of India, it was found necessary to consider the existing practice in disposing of escheated estates, which had belonged to Hindus, Muhammadans and others, to whom the Indian Succession Act does not apply.

2. In dealing with the escheated property of illegitimate Europeans who may die intestate in this country, it has been customary for the Government of India to be guided by the principles applicable to the disposal of similar escheats in England, under which the property, or a portion thereof, is distributed, as a matter of grace and bounty, to the next-of-kin of the deceased. The nature of these principles will appear from the accompanying summary of correspondence on the subject.

3. Before determining what principles should be laid down for dealing with escheats to which these rules of practice do not apply, the Governor-General in Council desires to have fuller information on the subject; and I am accordingly to request that, with the permission of the Honourable the Governor in Council, the Government of India may be favoured with a report on the following points:—

(1) The practice which has hitherto prevailed in dealing with escheats of the kind mentioned in the first paragraph of this letter, together with particulars in regard to the treatment of the more important cases which may have occurred in the Madras Presidency.

(2) The pecuniary value of such escheats during the last ten years.

(3) Whether the existing practice is in accordance with native custom and feeling.

ENCLOSURE.

SUMMARY of Correspondence regarding the Rules for dealing with Estates that become escheat to the Crown by failure of lawful heirs.

Financial Proceedings, No. 62-1 (Ab.), January 1864.
Home Department, No. 5211, dated 28th December 1865.
(Financial Proceedings, 171 and 171 a. and b., January 1866.)
To Home Department, No. 561, dated 3rd February 1866.
From Home Department, No. 1602, dated 17th February 1866.
To Home Department, No. 1012, dated 27th February 1866.
From Home Department, No. 2097, dated 3rd March 1866.

The Government of India having granted to a Mrs. Darke the half of the assets of the estate of the late Major R. Spencer (less one-tenth reserved for the purposes of the Government), Mrs. Darke applied for the payment of the moiety to her in England.

2. In complying with her request, the Secretary of State, on 24th November 1863, addressed the Government of India as follows: "Although I thus confirm

No. 62-1, Ab. January 1866.

the proceedings of your Government in this matter, I wish to point out to your Lordship that the practice observed in this country in dealing with estates that become escheat to the Crown by failure of lawful heirs is to grant the estate (subject to a

small deduction) to those persons who, but for the illegitimacy, would have had a claim thereto, according to the Statute of Distributions. The fact of the intestate having left a daughter would, by this rule, have shut out the claim of the mother to any participation in the estate."

3. "In any future case of an intestate estate devolving upon the Crown, I request that the Administrator-General be directed to remit the proceeds to this country, in order that the claims to it may be considered and decided upon by the Secretary of State in Council."

4. The instructions in the foregoing paragraph 3 having been communicated to the Administrator-General, Fort William, that officer reported that "the claimants to many escheated estates are in this country, and if the assets are remitted to England, they will often be put to much additional inconvenience and expense in proving their claims. It is also to be remarked that the veracity of the statements contained in such petition must be tested by the authorities in this country, where, in fact, the whole enquiry will practically be conducted. In many cases also a portion of the property consists of land, which must, of necessity, be placed in the hands of the Local Government."

5. He recommended accordingly that (in modification of the orders of the Secretary of State) the escheated estates should be retained for a time in this country, observing that, "before handing over any property to Government as an escheat, I am obliged, for my own security, to ascertain that the deceased was legitimate and left no next-of-kin at all or was illegitimate and left no wife or husband (as the case may be) or issue."

6. "In prosecuting my enquiries, it is probable that I shall ascertain if there are likely to be any petitioners for the estate; and such persons will be informed by me what course they should adopt. As a general rule, therefore, I think it would be sufficient to retain the property in India for one year after the date on which it was paid in to Government as an escheat; but if two years were allowed, the interest of all claimants in India would be amply consulted."

7. The Administrator-General enquired further regarding the course which he should adopt "when any portion of the estate consists of houses or land held in fee-simple."

8. And he observed also that in case of similar escheats (to those discussed by him) occurring in the Presidencies of Madras and Bombay, "it would be most convenient if the Administrators-General of Madras and Bombay were to hand over escheated property to the respective Governments of those Presidencies."

To Secretary of State, Public Department, No. 57, dated 12th September 1864 (Financial Proceedings, No. 171A., January 1866). 9. The foregoing was reported in the Home Department to the Secretary of State, with the following remarks:—

(a) In reference to the recommendation quoted in paragraph 6, it was observed that, "as a rule, the property should not be retained longer than one year in India, but that the Government should have power to extend the period to two years in cases in which application for the purpose may be made on good and sufficient grounds."

(b) In reference to the suggestions quoted in paragraphs 7, 8, it was added— "We agree with the Administrator-General that, in the Madras and Bombay Presidencies, escheated property should be made over by the local Administrators-General to their own Governments, and, in the Bengal Presidency, to the Government of India. When any portion of escheated property in this country shall consist of land, it will be necessary to make the land over, in the first instance, to the Government of India, who could then place it in the custody of the Local Government."

10. To the proposal in paragraph 9 (a), the Secretary of State replied, in his letter, No. 251 of 31st October 1865, that "I am prepared to acquiesce in the proposal of your Government so far as to allow all estates escheated to the Crown to be made over by the Administrator-General

to Government, and to be held for one year, during which time parties resident in India who may have claims on the bounty of the Crown in respect of such estates may make application; and at the expiration of that period the result of the investigation of any claims so preferred shall be referred for the final decision of the Secretary of State in Council."

11. "The general practice in the disposal of the effects of illegitimate persons dying intestate is to grant the residue thereof to those persons who, but for the illegitimacy, would have had a claim thereto according to the Statute of Distribution, after deducting the expenses incurred, and a proportion as the Crown's share, according to the following scale, viz.—

When the residue amounts to less than £500	..	..	$\frac{1}{10}$
Do. do. £500 and under £1,000	..	..	$\frac{1}{5}$
Do. do. £1,000 do. £5,000	..	..	$\frac{1}{3}$
Do. do. £5,000 do. £10,000	..	..	$\frac{1}{2}$
Do. do. £10,000 and upwards	..	..	$\frac{3}{4}$

12. "In special cases, however, in which the deceased may have left an invalid testamentary document clearly indicating his intentions, consideration is given to the same."

13. "In case the father of an illegitimate person has not fulfilled the duties of a parent, the rule derived from the Statute of Distribution is departed from, and preference is given to the mother or her relations."

14. "In case of a person dying intestate leaving a widow and no known next-of-kin, it is usual to permit the widow to retain the estate on the payment of the Crown's share, according to the foregoing scale, leaving her responsible for any claim that may be preferred by persons on account of relationship to the deceased."

Order—No. 1912, Judicial, dated 15th September 1881.

Copy to the Administrator-General, Madras, who will furnish, at an early date, information in the points specified in the last paragraph of the foregoing letter.

(True Extract.)

(Signed) R. DAVIDSON,
Chief Secretary.

To the Administrator-General, Madras.

Read—also the following paper:—

Extract from the Proceedings of the Government of India, Home Department (Judicial), under date Simla, 31st October 1898, No. 1252—65.

Read—

Letter to the Governments of Madras and Bombay, No. 290, dated the 30th April 1866, and enclosure.

Letter to Local Governments and Administrations, No. 17-Judicial—1121-1129, dated the 27th August 1881, and enclosure.

Resolution, No. 27-Judicial—1654-1663, dated 11th November 1882.

Despatch from the Secretary of State, No. 6-Financial (Funds), dated the 14th June 1883.

Letter from the Comptroller and Auditor General, Calcutta, No. 1109-D., dated the 15th December 1897.

Despatch to the Secretary of State, No. 31 (Judicial), dated the 16th June 1898.

Despatch from the Secretary of State, No. 5-Financial (Funds), dated the 28th July 1898.

Resolution.—In paragraph 11 of the summary of correspondence regarding the rules for dealing with estates that become escheat to the Crown by failure of lawful heirs, a copy of which was forwarded to Local Governments and Administrations with Home Department Circular Nos. 17—1121 to 1129, dated the 27th August 1881, it was stated that—

"The general practice in the disposal of the effects of illegitimate persons dying intestate is to grant the residue thereof to those persons who, but for the illegitimacy, would have had a claim thereto according to the Statute of Distribution, after deducting the expenses incurred, and a proportion as the Crown's share, according to the following scale, viz.:—

When the residue amounts to less than £500	..	..	$\frac{1}{10}$
Do. do. £500 and under £1,000	..	..	$\frac{1}{5}$
Do. do. £1,000 do. £5,000	..	..	$\frac{1}{3}$
Do. do. £5,000 do. £10,000	..	..	$\frac{1}{2}$
Do. do. £10,000 and upwards	..	..	$\frac{3}{4}$

This scale was adopted from the scale which then prevailed in England, and in working it the practice has been to take Rs. 10 as the equivalent of £1.

2. The scale in use in England has since been altered, and the Secretary of State has accordingly been pleased to direct that the following scale shall in future be used in India in determining the share of an escheated estate to be reserved to the Crown under the circumstances stated in paragraph 11 of the summary of correspondence:—

When the residue amounts to less than Rs. 5,000	..	..	$\frac{1}{10}$
Do. is not less than Rs. 5,000 but is less than Rs. 10,000	..	..	$\frac{1}{5}$
Do. do. Rs. 10,000 do. Rs. 50,000	..	..	$\frac{1}{3}$
Do. do. Rs. 50,000 do. Rs. 1,00,000	..	..	$\frac{1}{2}$
Do. is Rs. 1,00,000 and upwards	..	..	$\frac{3}{4}$

3. His Lordship has also directed that in the case of escheated estates which have to be distributed in England, the Crown's share shall be deducted in India before the balance is remitted to England.

Order.—Ordered, that this resolution be communicated to the Local Governments and Administrations and the Comptroller and Auditor General, Calcutta, for information and guidance, and to the Military and Finance and Commerce Departments for information, and that it be published in the Supplement to the Gazette of India.

Madras.	Burma.
Bombay.	Central Provinces
Bengal.	Assam.
North-Western Pro-	Coorg.
vinces and Oudh.	Hyderabad.
Punjab.	

(True Extract.)

(Signed) A. H. L. FRASER,
Offg. Secy. to the Govt. of India.

To the Government of Madras.

ORDER—No. 1753, Judicial, dated 14th November 1898.

Communicated to the Administrator-General for information and guidance.

(True Extract.)

for Chief Secretary.

To the Administrator-General.
" Accountant-General.
" Revenue Department.
Ed. C. M. Thambaswamy.

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CURRENT No. _____

ENCLOSURES TO G.O. No. _____

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DETTO

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
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